

HOUSE BILL 3122

By Dennis

AN ACT to amend Tennessee Code Annotated, Title 20,
relative to settlement offers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 20, is amended by adding Sections 2 through 6 of this act as a new chapter, to be designated as chapter 17.

SECTION 2.

(a) At any time more than ten (10) days before the trial begins, a party may serve upon the adverse party an offer to settle the case for the money, property or costs specified in the offer or for any combination of the money, property and costs specified in the offer. For the purposes of this chapter, costs shall include:

- (1) Court costs;
- (2) Reasonable deposition costs;
- (3) Reasonable expert fees and costs for not more than two (2) testifying expert witnesses;
- (4) Court reporter fees;
- (5) Pre-settlement interest; and
- (6) Reasonable attorneys' fees.

(b) A settlement offer may include all or a portion of the costs set forth in subsection (a). If any type of cost set forth in subsection (a) is not specified in the settlement offer, then that type of cost shall not be considered as part of such settlement offer.

(c) If a settlement offer is made by a defendant and rejected by a plaintiff in such action and the judgment rendered at trial is less than seventy-five percent (75%) of the

monetary value of the settlement offer, then the court shall reduce and off-set any damages awarded to the plaintiff from the defendant by the costs accrued by such defendant after the defendant's offer, up to the amount of any such damages awarded to plaintiff from such defendant. Costs shall include those expenses set forth in subsection (a).

(d) If a settlement offer is made by a plaintiff and rejected by a defendant in such action and the judgment rendered at trial is more than one hundred twenty-five percent (125%) of the monetary value of the settlement offer, then such defendant shall be liable to the plaintiff for the costs accrued after the making of the settlement offer in an amount up to but not exceeding the lesser of such costs or one-third ($\frac{1}{3}$) of the judgment the plaintiff was awarded against such defendant. Costs shall include those expenses set forth in subsection (a).

(e) If a settlement offer includes a confidentiality requirement or requires that either party admit or deny liability or wrongdoing, then the judgment rendered at trial shall be less than fifty percent (50%) of the monetary value of the settlement offer for subsection (c) to apply, or more than one hundred fifty percent (150%) of the monetary value of the settlement offer for subsection (d) to apply.

(f) Any party seeking an award of costs under this chapter shall move for such costs within ten (10) days of judgment. The burden to establish the reasonableness of requested costs shall be on the moving party. After considering any timely filed opposition to such motion, the court shall determine, award and order all reasonable costs to the extent and in the manner authorized by this chapter.

SECTION 3.

(a) If Section 2(c) or (e) apply to a plaintiff and Section 2(d) or (e) apply to the corresponding defendant, then the court shall first off-set each party's costs. If after such off-set, one (1) of the parties has any cost balance remaining, the court shall then apply Section 2(c), (d) or (e), whichever is applicable.

(b) Where the monetary value of property is in dispute, upon the request of either party, the finder of fact shall determine by special verdict such monetary value or, with the consent of the parties and where the court is not privy to the terms of any settlement offers made under this section, the court shall determine such monetary value.

SECTION 4.

(a) A settlement offer shall:

- (1) Be in writing;
- (2) State that is made pursuant to this chapter;
- (3) State the terms by which the claim may be settled;
- (4) State a weekday deadline that is not a court holiday, not sooner than seven (7) days after service of the offer, by which time the settlement offer shall be accepted in writing, unless withdrawn by the offering party prior to acceptance;
- (5) Be served on each party to whom the settlement offer is made; and
- (6) Only address the claims alleged in the pending litigation and not any other conduct or potential claims.

(b) The parties are not required to file a settlement offer with the court. Parties shall not disclose to the court or finder of fact offers made under this chapter except for the limited purposes permitted by Tennessee Rule of Evidence 408, or after final judgment, an offer may be disclosed to the court to the extent necessary to enforce this chapter or the settlement.

SECTION 5.

(a) A conditional acceptance of a settlement offer that contains terms or conditions that are materially different from the original offer is a counteroffer that terminates the ability to accept the original offer.

(b) An offer that expires before being withdrawn or accepted is considered rejected.

(c) If a party makes a settlement offer that is withdrawn before acceptance, expires or is rejected, the party may make one (1) or more subsequent settlement offers. A subsequent settlement offer by a party to an opposing party voids the prior settlement offer made pursuant to this chapter by that party to such opposing party.

(d) When an action involves more than one (1) plaintiff or defendant, settlement offers shall provide for an individual settlement offer to an opposing party and shall provide for individual acceptance by such opposing party without the consent of other parties. A settlement offer applies only to the opposing party to whom it was made. A party may extend individual settlement offers to one (1) or more opposing parties without making offers to all opposing parties in an action.

SECTION 6.

(a) This chapter shall apply to any chancery, circuit or appellate court in this state.

(b) This chapter does not apply to:

- (1) Class action suits;
- (2) Shareholder's derivative actions;
- (3) Domestic relations matters; and
- (4) Workers' compensation cases.

SECTION 7. This act shall take effect July 1, 2012, but it shall not apply to any lawsuit the trial of which begins on or before August 1, 2012, the public welfare requiring it.